

MARYLAND DEPARTMENT OF JUVENILE SERVICES



POLICY & PROCEDURE

SUBJECT: Youth's Rights – Access to Legal Counsel
NUMBER: RF-01-06 (Residential Services)
APPLICABLE TO: Residential Facilities
EFFECTIVE DATE: January 17, 2006

Approved: "/s/signature on original copy"
Kenneth C. Montague, Jr., Secretary

1. **POLICY.** Youth detained or committed in Department of Juvenile Services (DJS) operated facilities, and private facilities under contract with DJS are entitled to contact and engage in confidential communications with their legal counsel by telephone, in writing, and in person.
2. **AUTHORITY.**
 - a. Article 83C §§ 2-102, 2-111, 2-117 and 2-118 of the Annotated Code of Maryland.
 - b. Courts and Judicial Proceedings Article, § 3-8A-20.
 - c. American Correctional Association Standards for Juvenile Detention Facilities 3-JDF-3D-02.
 - d. Maryland Standards for Juvenile Detention Facilities.
3. **DEFINITIONS.**
 - a. *Contraband* means any item, material, substance or other item found or brought into a facility that is not authorized by the Facility Administrator for employee or youth possession.
 - b. *Legal counsel* means the attorney for the youth and their authorized representatives including social workers, case workers, evaluators, law clerks and other persons who have a legitimate connection with the legal issue being pursued.
4. **PROCEDURES.**
 - a. **General Procedures.**
 - (1) As a part of intake to a DJS residential facility, the Admissions Officer shall:
 - (i) Advise a youth of his right to communicate with his legal counsel.
 - (ii) Inquire of a youth, parent, guardian or assigned Case Management Specialist the name, address and telephone number of the youth's legal counsel.
 - (iii) Review court documents to attempt to identify the legal counsel

when a youth requests access to his legal counsel and the legal counsel is unknown.

- (iv) Advise youth without a legal counsel of their right to have and to communicate with legal counsel, including their right to have telephone calls with legal counsel at the Department's expense.

- (2) The Facility Case Management Specialist shall ensure that the name, address and telephone number of the youth's legal counsel is noted in the youth's base file.
- (3) Employees shall not offer legal advice to youth regarding a youth's case.
- (4) A Facility's Operating Procedure (FOP) may impose limitations to the time and frequency of contact with a youth's legal counsel only to the extent that such limitations do not unfairly restrict a youth's rights to access.
- (5) Youth may not be denied the right of access to legal counsel as punishment, disciplinary action or for failure to attain an educational or counseling measure or goal.
- (6) Youth shall have access to legal counsel in person or by telephone at all reasonable times or hours.

b. Communication by Mail.

- (1) Incoming and outgoing mail to legal counsel is privileged communication and shall not be opened unless there is substantial evidence of a security threat or the existence of contraband. In the event such evidence appears to exist, the mail may be opened. The mail shall only be opened in the presence of the youth from whom or to whom the mail is addressed, along with a second employee as a witness, and only for the purpose of monitoring for contraband or a security threat.
- (2) The contents of incoming and outgoing mail to legal counsel may not be read by employees.

c. Communication in Person.

- (1) A youth's legal counsel shall be permitted to visit a youth at any reasonable time and shall make those arrangements through the youth's Facility Case Management Specialist or other designated employee.
- (2) A youth's legal counsel shall be required to show proof of identification consistent with authenticating information in the youth's base file at the facility.

d. Communications by Telephone.

- (1) Youth may have telephone access to legal counsel as needed. Liberal but reasonable time limits shall be placed on calls to and from legal counsel.
- (2) Telephone contact shall be conducted in private.
- (3) The Facility Case Management Specialist or other designated employee shall verify the legal counsel/client relationship prior to calls being made or calls received from legal counsel.
- (4) If a youth requests telephone contact with legal counsel, the Facility Case Management Specialist shall contact the youth's legal counsel regarding the hours the legal counsel can be reached.
- (5) Telephone calls to and from legal counsel may interrupt regular program activities including school, group meetings or work duties when necessary.
- (6) When a youth is unable or unavailable to receive a telephone call from the youth's legal counsel, facility employees shall take a message from the youth's legal counsel, promptly relay the message to the youth and arrange for the telephone call at a later time.
- (7) Youth shall not be denied telephone calls from their legal counsel for disciplinary reasons.
- (8) Documentation of all telephone calls to and from a youth's legal counsel shall be kept on the facility telephone log per the Department's Youth Rights - Telephone Calls Policy.

5. **DIRECTIVES/POLICIES AFFECTED.**

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| a. | Directives/Policies Rescinded | 01.13.06 (Legal Representative Telephone Calls)
01.13.01 (Access to Legal Representatives) |
| b. | Directive/Policies Referenced - | RF-10-05 (Youth Rights - Telephone Calls Policy) |

6. **LOCAL IMPLEMENTING PROCEDURES REQUIRED** Yes

7. **FAILURE TO COMPLY.**

Failure to comply with a Secretary's Policy and Procedure shall be grounds for disciplinary action up to and including termination of employment.

Appendices – None.



MARYLAND DEPARTMENT OF JUVENILE SERVICES EMPLOYEE STATEMENT OF RECEIPT POLICY AND PROCEDURE

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I have received one copy (electronic or paper) of the Policy and/or Procedure as titled above. I acknowledge that I have read and understand the document, and agree to comply with it.

SIGNATURE

PRINTED NAME

DATE

(THE ORIGINAL COPY MUST BE RETURNED TO YOUR IMMEDIATE SUPERVISOR FOR FILING WITH PERSONNEL, AS APPROPRIATE.)